

September 13, 2001

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: Department of Development and Environmental Services File Nos. **L00TY404**
Proposed Ordinance No. 2001-0402

PEASLEY CANYON APARTMENTS

Rezone Application

Location: Lying 200 feet south and east of the intersection of Peasley Canyon Rd. and Military Rd. S. with frontage on both roads

Applicant(s): Landmark Development, *represented by*
Brett Jacobson
2711 West Valley Hwy North, Suite 200
Auburn, WA 98001
Telephone: (253) 333-7007

King County: Department of Development and Environmental Services
Current Planning, *represented by*
Karen Scharer
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SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions
Examiner's Recommendation	Approve, subject to conditions

PRELIMINARY MATTERS:

Complete application:	November 20, 2000
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EXAMINER PROCEEDINGS:

Hearing Opened: August 30, 2001
Hearing Closed: August 30, 2001

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Changed circumstances
- Comprehensive Plan policies
- Public interest

SUMMARY:

The rezone application is recommended for approval.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. GENERAL INFORMATION:

Request:	Rezone from NB (Neighborhood Business) to R-18 (Urban Residential) on 3.95 acres for development of multiple family dwellings.
Location:	Lying 200 feet south and east of the intersection of Peasley Canyon Road and Military Road South with frontage on both roads.
Proponent:	Bret Jacobson (253) 333-7007 Landmark Development 2711 West Valley Highway North, Suite 200 Auburn, WA 98001
County Contact:	Karen Scharer, Planner, Current Planning Section, LUSD Phone # 296-7114 or e-mail at karen.scharer@metrokc.gov
King County Permits:	Rezone L00TY404 & Building Permit B00L1628
Existing Zoning:	NB
Community Plan:	Federal Way
Drainage Basin:	Mill Creek
STR:	15-21-04; Parcel No. 152104 -9109

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the August 30, 2001 public hearing are found to be correct and are incorporated herein by reference. The LUSD staff recommends approval of the application, subject to conditions.
3. Landmark Development has filed a rezone application to reclassify 3.95 acres from NB (Neighborhood Business) to R-18 (Urban Residential) in order to accommodate construction of multiple family dwellings. The approximately 4 acres subject to the rezone request is part of a nearly 20 acre parcel that is proposed to accommodate 339 apartment units in all. The effect of the rezone will be to allow the Applicant to concentrate development on the relatively unconstrained north half of the site near the intersection of Military Road South and Peasley Road South, and away from wetlands to the east and single family residences to the south. The property is currently undeveloped and is located just east of the City of Federal Way.
4. In terms of the overall project, the review attendant to the rezone application only deals with limited aspects of the proposal. The impacts of development on the more than 15 acres already zoned R-18 are not subject to review within this proceeding, because the proposal as submitted is a permitted use on that portion of the property. Rather, the review hereunder is limited to the 3.95 acres to be rezoned and is focused on the question of whether a change from Neighborhood Business zoning to R-18 would result in unsatisfactory consequences. Accordingly, many of the comments of neighborhood residents directed toward the density of the project as a whole are beyond the scope of this rezone proceeding.
5. A rezone request is not vested to the regulations and policies in effect when a complete application is filed. Therefore, the package of policy and regulatory changes adopted by the County Council on March 12, 2001, as part of the 2000 Comprehensive Plan Review are applicable to this proposal. These include amendments to the rezone approval standards set out at KCC 20.24.190, in particular, new requirements that proposals to increase urban density meet the criteria of Comprehensive Plan policies U-118 through U-123. As amended, KCC 20.24.190D sets out three review standards to be applied to the instant rezone request. The first is that since the previous area zoning in 1995, "authorized public improvements, private development or other conditions or circumstances affecting the subject property have undergone substantial and material change" that was not anticipated or contemplated at the time of previous zoning review. The second requirement is that, for a request to increase urban residential density, the proposal must meet the criteria stated in Comprehensive Plan Policies U-118 through U-123. And the final requirement is that the requested rezone be in the public interest.
6. The "changed circumstances" requirement of the rezone standards offers to the Applicant and staff an unparalleled opportunity for creative analysis and imaginative flights of fancy, and the offering submitted on behalf of the Peasley Canyon Apartment rezone is no disappointment in this respect. For example, the Applicant's initial position was that the fact that contrary to expectations, little or nothing had changed with respect to the Neighborhood Business zoned properties in the area over the past few years was in itself a significant changed circumstance, thus elevating the ephemeral mental states of real estate speculators into regulatory facts.

7. Fortunately, over time an element of sobriety has entered into the picture, and the current menu of proffered changed circumstances contains some elements worthy of discussion. At the public hearing the following changed circumstances were proposed as supporting the rezone request: The 2000 Comprehensive Plan revisions now allow R-18 zoning within designated Neighborhood Business Centers; the Applicant's provision of sewer facilities to the area, including a lift station, opens the neighborhood for more intensive urban development; gasoline stations with small convenience stores are now in the process of development on three corners of the Military Road/Peasley Canyon intersection, thus obviating the need for further convenience retail development in the area; the discovery of 1.3 acres of wetlands and their associated buffers on the eastern portion of the site was an unexpected revelation to the Applicant; and the recent rezone by the City of Federal Way of 20 acres just west of the site from multi-family development to office park significantly alters the balance of commercial and multi-family zoned properties in the area.
8. Among the foregoing items we find that two of them merit recognition as legitimate instances of changed circumstances within the meaning of the ordinance. These are the revision of the Comprehensive Plan policies to allow multi-family residential designations in Neighborhood Business Centers, a regulatory action that signifies a major change of policy towards the composition of the Neighborhood Business Center designation. The second changed circumstance of importance is the reclassification by the City of Federal Way of 20 acres in the immediate vicinity from multi-family to office park uses. This large parcel lies north of South 320th Street, just west of the western boundary of the Neighborhood Business Center, and its redesignation substantially rearranges the balance of permitted uses in the neighborhood.
9. The remainder of the changed circumstances suggested falls short of the mark. Provision of sewer services and a lift station might qualify except that these facilities will be required with or without the rezone for the remainder of the apartment complex. Moreover, the revisions to KCC 20.24.190D specifically exclude from changed circumstances or conditions "actions taken by the current or former property owners to facilitate a more intense development of the property", which actions include the extension of utility services. The siting of new gasoline stations and convenience stores at the intersection of Military Road South and Peasley Canyon Road constitutes change but can hardly be described as unanticipated. Finally, in the Puget Sound region the discovery on a 20 acre site of slightly more than one acre of wetlands hardly qualifies as an unanticipated occurrence.
10. Regarding the ability of the proposed reclassification to meet the criteria stated in Comprehensive Plan Policies U-118 through U-123, the DDES staff report presents a thorough exploration of the issues raised, and we need not deal further with them at great length. The most important aspects of the analysis concern the proposal's potential compliance with the compatibility criteria stated at policy U-120A, the sensitive areas impacts under U-120C, and potential impacts on the City of Federal Way as referenced in U-120E and U-121. With regard to neighborhood incompatibility, no issues are presented on this rezone site's southeast or northern sides, where similar high density use zoning already exists. High density multi-family zoning is potentially in conflict with the lower density single-family R-4 zoning to the west across Military Road, but the important consideration here is that this compatibility conflict is already present under the NB zoning currently in existence. To the extent that multi-family development causes fewer traffic impacts and less light and glare than the current NB designation, one can reasonably conclude that the rezone

proposal could result in a slight increase in regulatory compatibility over the present condition.

With respect to the City of Federal Way, the City has been consulted and has indicated that it had no objection to the rezoning, *per se*. Its primary areas of concern involve traffic impacts on City streets, and the developer has entered into a mitigation agreement for proportional compensation of those impacts. Finally, the principle environmental concern raised within the review was presented by the Muckleshoot Indian Tribe, who expressed fear that site drainage discharges to Mill Creek would adversely affect salmon juvenile rearing habitat by increasing flow durations. Due to the porosity of on-site soils, however, the project expects to infiltrate all run-off, thus eliminating any adverse downstream drainage impacts. The staff report also contains a discussion of Policy U-122, which operates as a bonus provision that lends support to a request to increase urban density “when the proposal will help resolve traffic, sewer, water, parks or open-space deficiencies in the immediate neighborhood.” Staff argues that this policy is met by the proposal through the expected addition of left turn lanes, frontage improvements, and the sewer extension with its lift station. Our view is that these improvements also would be required by the overall project with the NB zoning in place, and therefore no positive benefit can be ascribed to the rezone as such.

11. Finally, the question of whether the requested rezone will be in the public interest comes down to two issues: first, whether there are unacceptable adverse impacts that can be attributed to the rezone, and second, whether the integrity of the Neighborhood Business Center designation will be compromised by the reclassification. On the former issue, as noted previously the request is essentially to change from one high intensity urban use to another. In this context, the exchange of retail and commercial zoning for high density multi-family zoning is probably a wash. If there is a significant difference, the multi-family zoning requested is the less impactful of the two designations. As for the continued integrity of the Neighborhood Business Center designation, it has slightly more than 10 acres as currently configured and would be reduced to little more than 6 acres if the rezone were granted. While an argument can be made that the viability of a 6 acre swath of Neighborhood Business zoning is less than optimal, the Applicant has demonstrated that the market demand for NB zoning in this location over the past ten years has been minimal and, more persuasively, that the conversion of 20 acres immediately to the west from multi-family to office park essentially reconfigures the commercial area in this neighborhood and focuses it north of South 320th Street.

CONCLUSIONS:

1. The record demonstrates the occurrence of changed circumstances affecting the property subject to the rezone application that have come into existence since the last previous area zoning.
2. The Applicant’s proposal to increase the urban residential density of the subject property meets the criteria stated in Comprehensive Plan Policies U-118 to U-123.
3. The requested reclassification is in the public interest.

RECOMMENDATION:

APPROVE the reclassification of the property to R-18 in lieu of NB.

ORDERED this 13th day of September, 2001.

Stafford L. Smith
King County Hearing Examiner

TRANSMITTED this 13th day of September, 2001, to the following parties and interested persons:

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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) ***on or before September 27, 2001***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before October 4, 2001***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1027, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE AUGUST 30, 2001 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO: L00TY404

Stafford Smith was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Karen Scharer and Dick Etherington. Participating in the hearing and representing the Applicant were R. W. Thorpe, and Bob Herman. Roberta Benson and Edward Raymond also participated in this hearing.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services File No.L00TY404 Application dated 10/24/00
- Exhibit No. 2 Department of Development and Environmental Services Preliminary report - Prepared 8/15/01
- Exhibit No. 3 Environmental Checklist dated 10/24/2000.
- Exhibit No. 4 Mitigated Determination of Non-significance dated 6/22/2001.
- Exhibit No. 5 Affidavit of Posting indicating 1/22/2001 as date of posting and 1/25/2001 as the date the affidavit was received by the Department of Development and Environmental Services.
- Exhibit No. 6 Revised Site Plan - updated 8/14/2001 received 8/15/2001
- Exhibit No. 7 Assessors Maps NW 15-21-04, NE 15-21-04, SE 10-21-04 & SW 10-21-04
- Exhibit No. 8 Traffic Study by Transportation, Planning, and Engineering, Inc. Dated 2/24, 2000
- Exhibit No. 9 Rezone Trip Generation letter by Transportation, Planning, and Engineering, Inc., dated 1/3/01
- Exhibit No. 10 City of Federal Way Traffic Information letter by Transportation, Planning, and Engineering, Inc., dated 5/16, 2001
- Exhibit No. 11 Letter from Federal Way dated 11/17/1997, regarding rezoning to R-18
- Exhibit No. 12 Letter from Federal Way dated 12/27/2000, regarding rezoning to R-18
- Exhibit No. 13 Letter from Federal Way dated 3/22/01, regarding rezone & building permit impacts of project
- Exhibit No. 14 Letter from Landmark Development dated 6/6/2001 with an attached Settlement Agreement with the City of Federal Way dated 6/6/2001
- Exhibit No. 15 Letter from Federal Way School District dated 2/5/2001
- Exhibit No. 16 Letter from Landmark Development regarding walkways to school bus, dated 4/13/2001
- Exhibit No. 17 Letter from the Office of Regional Policy And Planning, dated 12/2/99 regarding need for a Land Use Map Amendment
- Exhibit No. 18 Memo From the Office of Regional Policy And Planning, dated 1/24/2001 with reasoning for Exhibit No. 19
- Exhibit No. 19 E-mails from Carol Chan, Office of Regional Policy And Planning, dated 3/20/01 clarifying that a Land Use Amendment is no longer needed.
- Exhibit No. 20 Comprehensive Plan Land Use map of Neighborhood (www.5.metrokc.gov/servlet/com.esr.esrimap)
- Exhibit No. 21 Calculation Sheet w/Map for Sewer Pump Station proposed, received 8/10/01
- Exhibit No. 22 Letter from Lois Kutscha dated 2/10/01- concerns of traffic, roads, & sidewalks
- Exhibit No. 23 Letter from Lois Kutscha dated 8/2/01- letter submitted at pre-hearing – traffic, zoning mitigation, sewer, wetlands, site access, density, & history
- Exhibit No. 24 Letter from William Potter dated 2/1/2001 – concerns with roads, sewer, & previous single family use
- Exhibit No. 25 Letter from Joe Tucker received 2/16/2001 – concerns with wetlands, drainage & traffic
- Exhibit No. 26 Letter from the Muckleshoot Indian Tribe dated 2/20/2001 –regarding impacts downstream
- Exhibit No. 27 Bruce Dodds letter dated March 28, 2001 regarding Muckleshoot drainage issues
- Exhibit No. 28 Neighborhood character (series of photos)

Exhibit No. 29 Landscape Plan

Exhibit No. 30 Federal Way zoning map

Exhibit No. 31 Packet of letters regarding R. W. Thorpe Associates

Exhibit No. 32 Packet from R. W. Thorpe regarding changed circumstances

Exhibit No. 33 R. W. Thorpe memo regarding Federal Way School District

SLS:slb

Rezone L 00TY404 RPT